IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

ST.Rev..No. 152 of 2004

(TA.No.789/2001 of SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-I.ERNAKULAM)

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APPELLANT/RESPONDENT IN TA 789/2001.

M/S.MUTHOOT (APT) CERAMICS LTD.,
ERNAKULAM.

BY ADV. SMT.K.LATHA

RESPONDENT: APPELLANT IN TA 789/2001.

THE STATE OF KERALA.

BY SPL. GOVERNMENT PLEADER (TAXES) SRI.MOHAMMED RAFFIQUE

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev. No. 152 of 2004

Dated this the 8th day of October, 2007.

O R D E R

H.L.Dattu, C.J.

This revision petition arises under the provisions of the Kerala General Sales Tax Act. The assessee manufactures ceramic closets and effects sale of the ceramic closets along with the accessories such as seat cover, flushing systems etc.

(2). The assessee had filed its annual return for the assessment year 1998-1999 and had claimed total exemption from payment of sales tax on the sale of ceramic closets along with its accessories, in the light of the exemption Notification in S.R.O 1729/1993.

(3). The assessing authority while quantifying the tax liability has bifurcated the sales turnover of the assessee into sale of the ceramic closets and the sale of the accessories.

(4). Aggrieved by such quantification made by the assessing authority, the assessee was before the first appellate authority in S.T.A.No.1159 of 2001. The first appellate authority has modified the order of assessment passed by the assessing authority. In the order, the appellate authority has observed as under:

> "The other dispute is the disallowance of sales tax exemption on the tax due on Rs.6,87,656/-. This represents the proportionate turnover of seat cover, pushing system and paper roll holder purchased for manufacturing close units. According to the appellant, these items are essential parts required for the manufacture of closet units, without which the closet units cannot be sold. The appellant

> is eligible for tax exemption on the local sale of close units manufactured by the appellant. The above items are essential parts of the close units as in the case of lock, nut and bolts purchased for manufacturing Steel Cup Board etc. The disallowance of tax exemption on the ground that the above items are not manufactured by the appellant is not justified. I therefore, direct the assessing authority to give exemption of tax due on the entire turnover of closet units sold by the appellant locally. The appellant company raised no other points for my consideration. Hence the appeal stands modified. The assessing authority is directed to modify the assessment based on the above directions and observations."

(5). The State being aggrieved by the aforesaid order passed by the first appellate authority had carried the matter by way of second appeal before the Tribunal in T.A.No.789 of 2001. The Tribunal by its order dated 23rd May, 2003 has modified the orders passed by the first appellate authority. That is how the assessee is before us in this tax revision case.

(6). The assessee has framed the following questions of law for our consideration and decision:

> (i). Whether the exemptions under notification No.S.R.O.1729/93 is allowable on the turnover of the fittings of accessories purchased from suppliers which was supplied along with manufactured goods at free of cost as a package for the sale promotion?
>
> (ii). Whether ceramic closet manufactured by the unit and seat cover made of plastic, flushing systems with fitting and other accessories purchased from suppliers and sold as a package can be legally considered as the finished products of the unit?
>
> (iii). Whether the findings of the Tribunal that the first appellate authority obviously went wrong in holding that seat covers and flushing system cannot be sold independent of the sale of the closets is tenable when it is clear from the assessment records that whatever sale done

by the appellant was only along with these accessories as a package and not for a price separately other than the actual cost of the closets and when there was no case to the assessing officer that the appellant sold these accessories separately?

(iv). Whether the Tribunal can disallow the sales tax exemption of Rs.6,87,656/- granted by the First appellate authority by raising a contention that seat covers and flushing system can be sold independent of the sale of the closets is tenable when all the assessment records proved that the appellant had not sold any accessories like seat covers, flushing system etc separately for any value and thereby proved that these seat covers and flushing system had given free of cost and which has no independent existence in the specific case of this appellant?

(7). After hearing the learned counsel appearing for the parties to the lis, in our opinion, the only point that requires to be considered and decided by this Court is whether the petitioner is eligible for exemption from payment of sales tax on the sale of accessories such as seat covers, flushing systems, sanitary paper holders etc sold along with ceramic closets.

(8). The undisputed facts are: The assessee is a manufacturer of the ceramic closets. Under Notification No.1729 /1993, the State Government grants exemption from payment of sales tax to a manufacturer. The expression “manufacturer” is also defined under the said Notification. The assessee, while effecting sales of ceramic closets effects sales of seat cover, flushing systems, paper holders etc. Since those accessories are not manufactured by the assessee, the assessing authority has rightly rejected the claim made by the assessee for grant of exemption under S.R.O.No. 1729/1993. As we have already noticed, what is exempted under the exemption Notification 1729/1993 is a product manufactured by a dealer. In

the instant case, the dealer manufactures only ceramic closets and does not manufacture any other items such as seat covers, flushing systems, paper holders etc. Therefore, the assessing authority has rightly bifurcated the total taxable turnover of the assessee on the sale of ceramic closets and sale of seat covers, flushing systems, paper holders etc. In our opinion, this order of the assessing authority would not have been modified by the first appellate authority. Rightly keeping the purport of the Notification, the Tribunal has allowed the Revenue's appeal, thereby has modified the orders passed by the first appellate authority.

(9). In our opinion, the Tribunal has rightly understood the purport of the Notification and has rightly allowed the Revenue's appeal. Therefore, interference with the said order is not called for. Accordingly, the questions of law framed by the assessee requires to be answered against the assessee and in favour of the Revenue.

(10). In view of the order passed in the revision petition, I.A.No.1101 of 2004 is dismissed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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